

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

James Marquis Spencer, #753452

Plaintiff,

Case No. 2:17-cv-55

v.

Honorable Janet T. Neff

Aurbrey Lajoys Wilson,

**ORDER TO PROCEED IN FORMA
PAUPERIS WITH INITIAL FEE DUE
IN TWENTY-EIGHT DAYS**

Defendant.

_____ /

Plaintiff has sought leave to proceed *in forma pauperis* in compliance with 28 U.S.C. § 1915(a). The Court grants his motion. The Court must nevertheless require payment of the entire filing fee in installments, in accordance with 28 U.S.C. § 1915(b)(1). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997); *Hampton v. Hobbs*, 106 F.3d 1281 (6th Cir. 1997). The civil action filing fee is \$350.00 when leave to proceed *in forma pauperis* is granted. Any subsequent dismissal of Plaintiff's case, even if voluntary, does not negate Plaintiff's responsibility to pay the fee. *McGore*, 114 F.3d at 607.

Plaintiff must pay a portion of the \$350.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had an average monthly deposit of \$1.67. In this case, the average monthly deposit is greater than the average monthly balance. Twenty percent of Plaintiff's average monthly deposit is \$0.33. Plaintiff shall remit \$0.33 within 28 days of the date of this order to the address listed at the end of this order. The check or other form

of payment shall be payable to “Clerk, U.S. District Court” and must indicate the case number in which the payment is made.

After Plaintiff has paid the initial partial filing fee of \$0.33, Plaintiff must also pay the remaining amount of the filing fee through monthly payments of 20 percent of the preceding month’s income credited to Plaintiff’s prison trust fund account. 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of the prisoner to the Clerk of this Court each time the amount in Plaintiff’s trust account exceeds \$10.00, until the filing fee of is paid in full. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607; *Hampton*, 106 F.3d at 1284. The check or money order shall be payable to “Clerk, U.S. District Court” and must indicate the case number in which the payment is made. If the amount in Plaintiff’s account is \$10.00 or less, no payment is required for that month. *Hampton*, 106 F.3d at 1284-85.

After Plaintiff has paid the initial partial filing fee, and before the case has been served, the Court shall review the case pursuant to 28 U.S.C. §§ 1915(e), 1915A and/or 42 U.S.C. § 1997e(c)(1), as appropriate. After the Court reviews the case, the Court will determine whether dismissal or service of process is appropriate, and will fashion an order accordingly. Should the case be dismissed, voluntarily by Plaintiff or by the Court, Plaintiff shall remain responsible for the filing fee. *McGore*, 114 F.3d at 607. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States should Plaintiff prevail.

Once service of process has been ordered, Plaintiff shall serve upon Defendant, or if an appearance has been entered by an attorney, upon the attorney, a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original

paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to Defendant or the attorney. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court. Accordingly,

IT IS ORDERED that leave to proceed *in forma pauperis* is granted and within **28 days** hereof Plaintiff shall pay an initial partial filing fee of \$0.33 to the Clerk of this Court. **Plaintiff's failure to comply with this order may result in dismissal of this case without prejudice.**

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the remainder of the filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire remaining filing fee is paid.

Service of process will not be ordered until Plaintiff has complied with the payment of the initial partial filing fee requirement of this order.

Dated: March 27, 2017
mlc

/s/ Timothy P. Greeley
Timothy P. Greeley
U.S. Magistrate Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
P.O. Box 698
314 Federal Bldg.
202 W. Washington St.
Marquette, MI 49855

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."